

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ECHOTA WOLFCLAN,

Plaintiff,

v.

JILMA MENESSES, *et al.*,

Defendants.

Case No. C23-5938-JLR-MLP

ORDER

**I. INTRODUCTION**

This matter is before the Court on Plaintiff Echota Wolfclan's ("Plaintiff") Renewed Motion for Leave to Amend Complaint. (Pl.'s Mot. (Dkt. # 53).) Defendants filed a response (dkt. # 55), and Plaintiff filed a reply (dkt. # 56). The Court held oral argument on July 2, 2024. (Dkt. # 58.) Having considered the parties' submissions, oral argument, the balance of the record, and the governing law, Plaintiff's Motion (dkt. # 53) is GRANTED in part and DENIED in part, as further explained below.

**II. BACKGROUND**

Plaintiff filed this action *pro se* on October 19, 2023. (Dkt. # 1.) Plaintiff's claims generally allege that Defendants failed to timely provide Plaintiff competency restoration

1 services while he was detained in the Pierce County Jail under unsanitary conditions. (*Id.*) On  
2 December 8, 2023, Plaintiff filed a motion for summary judgment. (Dkt. # 12.) On the same date,  
3 the Court issued an Order directing service of the complaint on the four Defendants named in  
4 Plaintiff's initial complaint: Jilma Menesses, Secretary of the Washington State Department of  
5 Social and Health Services ("DSHS"); Charles Southerland<sup>1</sup>, interim CEO of Western State  
6 Hospital ("WSH"); Cassie Villegas, interim Director of the Office of Forensic Mental Health  
7 Services; and the State of Washington. (*See* dkt. ## 11, 14.) The Court also directed that  
8 Plaintiff's proposed motion for summary judgment be stricken as premature and advised that  
9 Plaintiff could re-file his motion after Defendants appeared and the parties had an opportunity to  
10 conduct any necessary discovery. (*See* dkt. # 14.)

11 On December 28, 2023, Plaintiff filed an amended complaint in which he added two  
12 Defendants: Kevin Bovenkamp, Assistant Secretary of DSHS; and Brian Waiblinger, Medical  
13 Director of WSH. (Dkt. # 16.) The Court ordered service on the two new Defendants on January  
14 3, 2024. (Dkt. # 22). The *pro se* amended complaint (dkt. # 16) is the operative pleading in this  
15 action.

16 On January 24, 2024, Plaintiff re-filed his summary judgment motion. (Dkt. # 27.) On  
17 February 12, 2024, Defendants filed a response to Plaintiff's motion for summary judgment  
18 together with a cross-motion for summary judgment. (Dkt. # 28.) Those motions were noted for  
19 consideration on March 8, 2024. (Dkt. # 38.)

20 On February 26, 2024, counsel appeared on behalf of Plaintiff. (Dkt. ## 39, 40.)  
21 Plaintiff's counsel communicated with Defendants' counsel the same day seeking a stipulation to  
22 remove the pending cross-motions for summary judgment from the Court's calendar and to  
23

---

<sup>1</sup> Defendant Southerland was identified as "Charles Sutherlin" in the initial and amended complaint. (Dkt. ## 11, 16.)

1 provide a date for Plaintiff's counsel to amend the complaint. (Dkt. # 43 at ¶ 7, Ex. A.)  
2 Defendants' counsel declined to stipulate on the grounds that some named Defendants are  
3 entitled to absolute immunity and the remaining Defendants are high ranking officials and, thus,  
4 are not proper defendants in this action. (*See id.*) On February 29, 2024, Plaintiff's counsel  
5 moved to withdraw Plaintiff's pending summary judgment motion and filed motions to amend  
6 Plaintiff's complaint and to continue Defendants' summary judgment motion. (Dkt. ## 42, 44.)

7 On April 8, 2024, the Court denied the motion to amend without prejudice because  
8 Plaintiff did not submit a proposed amended complaint with his motion pursuant to Local Civil  
9 Rule ("LCR") 15. (Dkt. # 51.) However, Plaintiff was granted leave to file a renewed motion to  
10 amend together with a proposed amended pleading by May 8, 2024. (*Id.*) In addition,  
11 Defendant's motion for summary judgment was stricken subject to re-noting once any renewed  
12 motion to amend was resolved. (*Id.*) On May 8, 2024, Plaintiff filed a renewed motion to amend  
13 together with a proposed amended complaint. (Dkt. ## 53, 54.) Defendants oppose Plaintiff's  
14 Motion, primarily arguing that the proposed amendments are futile. (Dkt. # 55.)

### 15 III. DISCUSSION

16 Plaintiff's proposed second amended complaint includes causes of action for: (1) 42  
17 U.S.C. § 1983 violations regarding the Fourteenth Amendment's Equal Protection Clause; (2)  
18 negligence, gross negligence, and negligence *per se*; (3) tortious failure to keep health and  
19 safety; (4) negligent infliction of emotional distress; and (5) outrage. (Dkt. # 54, Ex. A.)  
20 Proposed defendants include Jilma Menesses, Thomas Kinlen, Charles Southerland (together  
21 with Defendants Menesses and Kinlen, the "Individual Defendants"), and DSHS. (*Id.*)  
22 Defendants Menesses and Southerland were named in Plaintiff's amended complaint (dkt. # 16),  
23 while Defendants Kinlen and DSHS are named for the first time here. The proposed second

1 amended complaint omits the State of Washington, Kevin Bovenkamp, Brian Waiblinger, and  
2 Cassie Villegas as defendants, all of whom were previously named in the amended complaint.  
3 (*Compare* dkt. # 16, *with* dkt. # 54, Ex. A.)

4 **A. Pleading Amendment Standards**

5 After a party has already amended its complaint as a matter of course, Federal Rule of  
6 Civil Procedure 15 requires leave of Court to file another amended complaint. Fed. R. Civ. P.  
7 15(a). “The court should freely give leave when justice so requires.” *Id.*; *see Eminence Cap.,*  
8 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (Leave to amend under Rule 15 “is to  
9 be applied with extreme liberality.”) (quotation omitted). Factors weighing against leave to  
10 amend include undue delay, bad faith, failure to cure deficiencies in previous amendments,  
11 undue prejudice to opposing parties, and futility of amendment. *Foman v. Davis*, 371 U.S. 178,  
12 182 (1962).

13 **B. Section 1983 Claims**

14 Defendants argue that they are broadly immune to § 1983 claims under the Eleventh  
15 Amendment, and that such immunity renders Plaintiff’s proposed § 1983 cause of action futile.  
16 Defendants are correct that DSHS, a state agency, is immune from suit under § 1983, and the  
17 Individual Defendants are likewise immune from damages claims arising under § 1983 that stem  
18 from actions taken in their official capacities. *See Cornel v. Hawaii*, 37 F.4th 527, 531 (9th Cir.  
19 2022) (“States or governmental entities that are considered ‘arms of the State’ for Eleventh  
20 Amendment purposes are not ‘persons’ under § 1983.” (citation omitted)); *Arizonans for Off.*  
21 *Eng. v. Arizona*, 520 U.S. 43, 69 n.24 (1997) (“State officers in their official capacities, like  
22 States themselves, are not amenable to suit for damages under § 1983.”). However, the  
23 Individual Defendants may be sued under § 1983 for actions taken in their personal capacities,

1 since immunity does not extend to such circumstances. *See id.* (“State officers are subject to  
2 § 1983 liability for damages in their personal capacities, however, even when the conduct in  
3 question relates to their official duties.”).

4 Defendants further argue that none of the Individual Defendants are personally  
5 responsible for Plaintiff’s alleged deprivation of rights. (Dkt. # 55 at 4, 8-11.) However, this  
6 argument raises questions of fact that cannot be resolved at the pleading stage, where factual  
7 allegations in the complaint are accepted as true. *See Sprewell v. Golden State Warriors*, 266  
8 F.3d 979, 988 (9th Cir. 2001). While Plaintiff must prove these facts to prevail in his case,  
9 Plaintiff’s proposed complaint includes sufficient factual allegations to state § 1983 claims  
10 against the Individual Defendants in their personal capacities.

11 Defendants also argue that Plaintiff’s claims constitute impermissible claim splitting  
12 because Plaintiff has ongoing litigation against Pierce County based on alleged mistreatment and  
13 unsanitary conditions in the Pierce County Jail. *See Wolfclan v. Pierce County, et al.*, No. 3:23-  
14 cv-5399-TSZ-SKV (W.D. Wash.). Plaintiff’s present claims, however, arise from separate facts  
15 and transactions than his claims against Pierce County. *See Mendoza v. Amalgamated Transit*  
16 *Union Int’l*, 30 F.4th 879, 887 (9th Cir. 2022). Plaintiff’s claims in this case—that state officials  
17 failed to provide him with required and timely competency restoration services—would survive  
18 even if the alleged conditions at Pierce County Jail were rectified. Given the differences between  
19 the two cases’ facts, it was permissible for Plaintiff to file separate actions.

### 20 C. Tort Claims

21 Defendants argue that Plaintiff’s tort claims are procedurally deficient because they did  
22 not comply with RCW 4.92.110—a Washington law requiring tort claims against the state or its  
23 agencies, officers, and employees to be presented to the office of risk management sixty days

1 prior to initiation of an action for such claims. (Dkt. # 55 at 6-7.) “These requirements ‘allow  
2 government entities time to investigate, evaluate, and settle claims,’” thereby saving public  
3 resources. *Chang v. Vanderwielen*, 2022 WL 7048122, at \*8 (W.D. Wash. Oct. 12, 2022)  
4 (quoting *Lee v. Metro Parks Tacoma*, 183 Wn. App. 961, 968 (2014)). “Dismissal of an action  
5 for lack of subject matter jurisdiction is required if the tort claim submitted under chapter 4.92  
6 RCW does not strictly comply with the statutory procedure.” *Schoonover v. State*, 116 Wn. App.  
7 171, 177 (Wash. Ct. App. Div. 2, 2003).

8 At oral argument, Plaintiff’s counsel conceded that Plaintiff did not present his tort  
9 claims to the state prior to filing this action—the tort claims were presented after Plaintiff, acting  
10 *pro se*, filed his initial complaint. Since RCW 4.92.110’s requirements are a jurisdictional  
11 “condition precedent” to filing a tort action against the state, Plaintiff cannot retroactively cure  
12 this deficiency in this action, rendering his proposed tort claims futile. *See Jones v. Univ. of*  
13 *Wash.*, 62 Wn. App. 653, 661 (Wash. Ct. App. Div. 1, 1991); *see also Hyde v. Univ. of Wash.*  
14 *Med. Ctr.*, 186 Wn. App. 926, 929 (Wash. Ct. App. Div. 1, 2015) (“Dismissal is the proper  
15 remedy for failure to comply with these tort claim filing requirements.”). Accordingly, this Court  
16 lacks jurisdiction over Plaintiff’s tort claims.

#### 17 IV. CONCLUSION

18 For the foregoing reasons, the Court hereby ORDERS that:

19 (1) Plaintiff’s Motion (dkt. # 53) is DENIED as to his § 1983 claim (dkt. # 54, Ex. A,  
20 Count 1) to the extent it is asserted against: (1) DSHS; and (2) the Individual Defendants acting  
21 in their official capacities.  
22  
23

1 (2) Plaintiff's Motion (dkt. # 53) is GRANTED as to his § 1983 claim (dkt. # 54, Ex.  
2 A, Count 1) to the extent it is asserted against the Individual Defendants acting in their personal  
3 capacities.

4 (3) Plaintiff's Motion (dkt. # 53) is DENIED as to his tort claims (dkt. # 54, Ex. A,  
5 Counts 2-5).

6 (4) Plaintiff shall file a second amended complaint that comports with the Court's  
7 ruling within ten (10) days of this Order.

8 (5) The Clerk is directed to send copies of this order to the parties and to the  
9 Honorable James L. Robart.

10 Dated this 10th day of July, 2024.

11  
12 

13 MICHELLE L. PETERSON  
14 United States Magistrate Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23